

**REMARKS**

Claims 1-21 remain in this application.

**Claim Rejections – 35 USC § 103**

The Examiner rejected Claims 1-5, 9-21 under 35 USC 103(a) as being unpatentable over the allegedly admitted prior art (fig. 1 as described in the background of the present invention) in view of Paatela (US2006/0209840A1)). Applicants respectfully traverse this rejection for at least the reasons stated below.

As stated in MPEP § 2143.01, to establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974).

As set forth above and incorporated herein above, Paatela fails to disclose (bolded for emphasis):

sequentially processing the PDU at each of a plurality of hierarchical levels, said processing at each of the plurality of hierarchical levels consisting of: characterizing the flow at ***the current hierarchical level***;

gating the PDU wherein the PDU is either passed or dropped based upon the character of the flow at the current level, wherein the gating includes applying a color to the PDUs of the flows based upon traffic parameters ***specific to those flows at a second hierarchical level***.

The Examiner states that Paatela describes a single or two rate tri-color marker which provides a mechanism for marking packets when they exceed a contracted bandwidth. However, the Examiner has not shown that Paatela describes applying a color to the PDUs of the flows based upon traffic parameters ***specific to those flows at a second hierarchical level***.

Paatela does not teach or suggest characterizing a flow at a current level and coloring the flow at a second level. As such, Applicant believes that the currently amended independent claims, as well as the claims that depend from them, are in condition for allowance and respectfully request they be passed to allowance.

**CONCLUSION**

For the above reasons, the foregoing amendment and response places the Application in condition for allowance. Therefore, it is respectfully requested that the rejection of the claims be withdrawn and full allowance granted. Should the Examiner have any further comments or suggestions, please contact the undersigned.

	Respectfully submitted,
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